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Assistance to Guatemala in the field of human rights

Report by the Independent Expert, Mrs. Mónica Pinto, on the situation of human rights in Guatemala, submitted in accordance with Commission resolution 1995/51

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INTRODUCTION

1. The Commission on Human Rights has been considering the situation of human rights in Guatemala since its thirty-fifth session. In 1983, the Chairman of the Commission appointed Viscount Colville of Culross (United Kingdom) as Special Rapporteur, with a mandate to make a detailed study of the human rights situation in Guatemala. In 1986, the Commission changed his designation to that of Special Representative, with a mandate to receive and evaluate the information received from the Government about the implementation of the new legislation intended to protect human rights. In 1987 the mandate of the Special Representative was terminated, and the Commission requested the Secretary-General to appoint an expert with a view to assisting the Government in adopting the necessary measures for the subsequent restoration of human rights. Mr. Héctor Gros Espiell (Uruguay) was appointed for that purpose, until his resignation in 1990. In the same year, the Commission requested the Secretary-General to appoint an independent expert as his representative to examine the human rights situation and to continue assistance to the Government in the field of human rights. Mr. Christian Tomuschat (Germany) was appointed in 1990 and served in that capacity until 7 June 1993. On 28 October 1993, the Secretary-General appointed Mrs. Mónica Pinto (Argentina). Her mandate was extended by Economic and Social Council decisions 1994/257 and 1995/268, as requested by the Commission on Human Rights in resolutions 1994/58 and 1995/51.

2. From 29 May to 2 June 1995, the Expert held the first round of consultations in Geneva in the context of her mandate. During this period she attended the second Meeting of Special Rapporteurs/Representatives/Experts and Chairmen of Working Groups responsible for special procedures of the Commission on Human Rights and the programme of advisory services; she had meetings with the Permanent Representative of Guatemala to the United Nations Office at Geneva, officials of other organizations in the United Nations system and representatives of non-governmental organizations.

3. In fulfilment of her current mandate, the Expert made her third visit to the Republic of Guatemala from 6 to 14 October 1995 and later held consultations at the United Nations Office at Geneva and in Mexico City. Her programme of work is outlined in the annex to this report.

4. The Expert consulted all accessible and reliable sources in order to acquaint herself with the development of the human rights situation in Guatemala. In doing so, she was afforded extensive cooperation by the Government. In addition to consulting the documentation received from other United Nations bodies, the United Nations Mission for Verification of Human Rights and of Compliance with the Commitments of the Comprehensive Agreement on Human Rights in Guatemala (MINUGUA), intergovernmental organizations and non-governmental organizations, she freely interviewed a large number of persons and representatives of Guatemalan human rights, social, trade union, economic and indigenous organizations.

5. The information compiled was analysed in the light of the international human rights instruments which are binding on Guatemala: the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights,

the Convention on the Prevention and Punishment of the Crime of Genocide, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of the Child, the Slavery Convention and the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, the Convention and Protocol relating to the Status of Refugees, and a large number of international labour conventions, including in particular International Labour Organization Convention No. 87 concerning Freedom of Association and Protection of the Right to Organize, 1948, Convention No. 98 concerning the Application of the Principles of the Right to Organize and to Bargain Collectively, 1949, and Convention No. 111 concerning Discrimination in respect of Employment and Occupation, 1958. Guatemala is also a party to the four Geneva Conventions on international humanitarian law of 1949 and the two Additional Protocols of 1977, the American Convention on Human Rights, having recognized the jurisdiction of the Inter-American Court of Human Rights on 20 February 1987, and the Inter-American Convention to Prevent and Punish Torture. The above-mentioned instruments take precedence over Guatemalan internal law under article 46 of the 1985 Constitution (as amended in 1994).

6. The mandate entrusted to the Expert consists in: (a) reporting to the Commission on developments in the general human rights situation in Guatemala, for which purpose she holds consultations with various information sources, which enables her to draw conclusions and make recommendations; and (b) advising and assisting the Government in the field of human rights, making specific recommendations to it.

7. This report refers to events between January and October 1995. Exceptionally, when circumstances have, in the Expert's opinion, so required, earlier events have been mentioned.

I. THE POLITICAL AND INSTITUTIONAL CONTEXT IN 1995

8. Two developments attracted the particular attention of the Guatemalan people in 1995: the peace negotiations and the general elections. Over one year after the resumption of the peace negotiations resulting from the Framework Agreement signed in January 1994, the parties to the peace process have dealt with the agenda items punctually, United Nations assistance being provided by the Special Envoy of the Secretary-General for the peace process, Mr. Gilberto Schlittler-Silva, and the Moderator, Mr. Jean Arnault. In this context, a number of substantive undertakings have been made together with formal commitments and the deployment of the international verification requested.

9. With regard to substantive issues, on 31 March 1995 the Agreement on Identity and Rights of Indigenous Peoples was signed, based on the idea of a multi-ethnic, multicultural and multilingual nation and recognizing the identity of indigenous peoples (Maya, Garífuna and Xinca) in the building of national unity. Among the elements forming this identity, it mentions their

direct descent from the ancient Mayas, their languages deriving from a common Maya root, a world view based on harmonious relations among the elements of the universe and self-identification.

10. The Contadora Declaration, adopted on 23 August 1995, on the occasion of the Conference on Political Parties, organized by the Central American Parliament (Parlacen) in Panama City, embodied the opinions of the Government Peace Commission (COPAZ), the commanders of the Unidad Revolucionaria Nacional Guatemalteca (URNG) and the political leaders who attended. The Government and the URNG pledged to take measures to enable the Guatemalan people to hold elections in peace and security. In particular, the URNG pledged unilaterally to suspend its military activities from 1 to 13 November. It was also decided that the agreements reached in the framework of the peace negotiation process are State agreements and therefore remain binding despite any changes in the individuals participating in them.

11. MINUGUA was established on 21 November 1994, and its mandate has been renewed for two six-month periods. At the time of writing this report, MINUGUA had submitted three reports (A/49/856 and Corr. 1; A/49/929; and A/50/482) to the Secretary-General and requested that they be distributed in the General Assembly.

12. On 18 May 1995, the Supreme Electoral Tribunal convened general, presidential and parliamentary elections for 12 November 1995, with a second round scheduled for 7 January 1996 if necessary. These elections are for President, Vice-President, 80 deputies to the Congress through the system of electoral districts and a national list, 20 regular deputies and alternates to the Central American Parliament (Parlacen), and 300 mayors. The numbers are based on the latest population census of 1981, and although they are questioned by some political parties, according to the Supreme Electoral Tribunal they were the only source available on the date the elections were convened. With an electoral register of 3,711,589 citizens, 23 political parties have registered candidates, of whom 16 are running for President.

II. PROTECTED RIGHTS

13. The legal system in force in Guatemala encompasses civil, political, economic, social and cultural rights. As of 31 August 1995, the office of the Procurator for Human Rights had received 11,793 complaints of alleged violations, compared with 13,431 received by 31 October 1994; of these complaints 1,235 were declared within its competence. As for MINUGUA, by 30 September 1995, the date of its third report, it had verified 1,282 cases, of which 46 per cent were found to involve a violation of the rights protected in the Comprehensive Agreement on Human Rights and slightly over 50 per cent were the subject of further verification.

14. Apart from the varying significance of the figures themselves and the disparity in the periods for which they were issued, due to the dates of the field missions carried out by the Expert, it should be made clear that the scope of the work of the office of the Human Rights Procurator is at least 30 per cent wider than that of MINUGUA; the former includes complaints relating to economic, social and cultural rights while the latter limits itself to the civil and political rights mentioned in the Comprehensive

Agreement. Even allowing for the possible submission of complaints to both bodies, the number of complaints to the Procurator is approximately 15 or 20 per cent higher than those addressed to MINUGUA.

15. The closeness of the figures to the ones obtained last year does not automatically mean that the situation has improved, since MINUGUA has been conducting verification work around the country during the period under study and its deterrent effect as regards human rights violations is of no little importance.

A. Civil and political rights

1. Right to life

16. As in the previous year, the right to life was the right most frequently violated in 1995, representing 35 per cent of the allegations admitted by MINUGUA in its first report, 40 per cent in the second and 37 per cent in the third. The period has been marked by extrajudicial executions, murders indicative of a kind of social cleansing, and an unfortunate return to the massacres of recent years, as evidenced by the exhumations carried out in secret burial grounds. In this connection, Mr. Bacre N'diaye, the Special Rapporteur on extrajudicial, summary or arbitrary executions, has stated that violations continue to occur "on an alarming scale, despite the peace process" (E/CN.4/1995/61, para. 141).

17. On 11 July 1995 reports were confirmed of the murder of Pastor Manuel Saquic Vasquez, of the Presbyterian Evangelical Church of Guatemala, who had disappeared some days earlier, on 23 June. His remains were exhumed in Chimaltenango cemetery, where he had been buried in an unidentified grave. Pastor Saquic had been performing important work as a member of the Regional Committee for the Defence of Human Rights of the Kakchiquel Presbytery in Chimaltenango. MINUGUA stressed the cruel and treacherous nature of the crime, which would appear to make it not an ordinary homicide but a crime designed to intimidate the organizations and individuals working in the field of human rights. In August, it was alleged that the Military Commissioner in Panabajal Comalapa, Víctor Román, was responsible for this crime. Several warrants were issued for his arrest, but no arrest had been made by the time of the Expert's visit to Guatemala.

18. Other victims of extrajudicial executions were Esau Avendaño, an engineering professor at the University of San Carlos (USAC), who was machine-gunned from a car with darkened windows as he and his wife were leaving a pharmacy in early January 1995, and Dr. Marco Antonio Quezada Díaz, who had worked as Secretary of the USAC from 1990 to 1994 and was at the time of his murder the head of medical affairs in the University's medical faculty. He was shot on 5 March 1995. These cases have not been elucidated.

19. The number of murders committed in Guatemala has risen to such levels as to warrant use of the term "social cleansing". In January 1995, four soldiers of the Presidential Guard were charged with killing one man and wounding three other persons in the town of Amatitlán. The victims were Conrado Ramírez García (killed), Cándida Aquino Yansi, and Feliciano and Juan José Ramírez Yansi. Thanks to the reaction of local residents

Private Aníbal Segura Alvarado, and later Private Edwin Geovanni Herrarte del Cid, were apprehended. MINUGUA began investigations into the case. On 16 June 1995, the Human Rights Procurator confirmed the human rights violations and stated that there was "strong, serious and sufficient" evidence of the soldiers' responsibility.

20. On 29 January 1995 a journalist from the newspaper El Gráfico, Alberto Antoniotti Monge, was murdered by five armed men in front of his home in Guatemala City. On 7 February, the National Police arrested Herber Melgar and Omar Aguilar and charged them with the murder. However, the two men, both aged 18, maintain that they were abducted and tortured. Historian Erik Raúl Pedro Chinchilla García, head of the Cultural Heritage Register of the National Council for the Protection of Antigua Guatemala, and Carlota González, were also executed (shot in the head) on the San Luis-Las Carretas road.

21. On 12 July 1995 prosecutor Sidney Geovanni López Laparra was shot dead while driving home from work. He had brought charges against Ortega del Cid, a notorious criminal accused of several killings, including that of Karin Fleischmann. The accused had threatened witnesses, officers, lawyers and prosecutors, and in many cases witnesses had declined to give evidence. At the time of the murder more than 20 prosecutors and judges had received threats related to their professional duties.

22. Massacres have been a sad fact of Guatemalan life, especially in the 1980s, a period which has intruded into the present through the exhumations that have begun in recent years now that survivors and victims' relatives are able to stand the shock. In connection with these events it should be noted that on 24 April 1995 the Archbishop of Guatemala announced a project entitled "Reclaiming the Historical Memory". This proposal was originally submitted by the Archdiocesan Human Rights Office (ODHA), in which various parishes participate. The project is basically intended to document the human rights violations that have taken place during the 35 years of armed conflict.

23. For three months, from May to July 1995, members of the Argentine Forensic Anthropology Team worked in the secret graveyard at Las Dos Erres in La Libertad, Petén. They exhumed 162 skeletons of men, women and children. When they had finished their work they filled in the pit in the presence of representatives of the Judiciary, the Pubic Prosecutor's Office, the Office of the Human Rights Procurator and the press. The remains were buried in Las Cruces cemetery. The Expert visited both places on 8 October 1995, and also the village of Josefinos, where there is another, not yet exhumed, common grave.

24. In the expert report prepared by the anthropologists and submitted to the judge in case 1316/94, Office No. 4, Judicial Department of Petén, on 25 July 1995, Patricia Bernardi, Darío Mariano Olmo and Silvana Turner refer to a "primary synchronous" common grave, located at site No. 1, known as "The pit", which contained the remains of at least 162 people, including 67 (41.35 per cent) children under 12 years of age. The anthropologists stated that 24 were skeletons of women and 64 of men and that in 74 cases the sex could not be determined since the skeletons were of infants, whose sexual

characteristics were not apparent. A calendar found in the pocket of one of the victims made it possible to situate the event as having occurred no earlier than 1982. The victims were clothed and had been thrown into the pit, judging from the way the remains were lying and the fractures noted. Shell fragments and used cartridges from Israeli-made Galil rifles were also found. More remains were found in two other locations, "La Aguada" and "Los Salazares".

25. Exhumations at Las Dos Erres continued with the discovery of a new secret graveyard located in the village of Agua Fría, Uspantan, Quiché, where the charred remains of dozens of peasant women and children were found on 15 June 1995. It is assumed that 100 or so people were killed on 14 September 1982 by members of a patrol from the village of Xococ. Three civilian patrol members have been arrested for these crimes. In July 1995, the Guatemalan Forensic Anthropology Team exhumed thousands of parts of human bodies belonging to some 350 people in three trenches located in Cuarto Pueblo, Ixcán, which the Expert inspected last year in the course of her visit to that area.

26. On 5 October 1995, the word "massacre" again hit the headlines when 26 members of the First Company of Battalion I, Military Zone 21, Rubelsanto Detachment, under the command of an army second lieutenant, seriously violated the right to life of the returnee civilian population by deliberately firing at members of the "Aurora 8 de octubre" community. Eleven persons, including two children, were killed and 30 wounded. Investigations by MINUGUA indicate that the community members were not carrying weapons, and all the available data leads to the conclusion that all the victims, including the three wounded soldiers, were hit by bullets fired by members of the patrol.

27. On Saturday, 7 October 1995, the Expert visited the "Aurora 8 de octubre" community, located on the Xamán estate in the municipality of Chisec, Alta Verapaz; she was accompanied by officials from the Office of the United Nations High Commissioner for Refugees (UNHCR) and MINUGUA. The statements she heard on that occasion, together with the talks she held throughout the mission, paint a picture of events that is basically consistent with that described by MINUGUA and acknowledged by UNHCR. Without prejudice to the existence of different accounts of the exact reasons for the patrol's presence on the estate where the returnees were preparing to celebrate 8 October 1995, the first anniversary of their return to Guatemala, the patrol's presence in the centre of the community had created tension among the civilian residents who voiced their disapproval with increasing aggressiveness. Surrounded by the peasants, the soldiers were attempting to escape when one individual tried to seize the weapon of a sergeant, who automatically gave the order to fire. The alleged attacker and two other individuals were killed. Heavy shooting then broke out wounding three soldiers in addition to killing members of the community. As they were leaving the community, the soldiers killed eight-year-old Santiago Pop Tut by shooting him in the back more than once; he had been fishing and was on his way home.

28. The President of the Republic quickly took responsibility for the investigation of these events, in his capacity as Commander-in-Chief of the

army, and also took steps resulting in the placing of the soldiers at the disposal of the competent judge and the dismissal of the chief of Zone 21 detachment. On Monday, 9 October, the Minister of Defence resigned, and his deputy, until then Chief of Staff, General Marco Antonio González Taracena, was appointed to replace him. On the same day, the Human Rights Procurator issued a statement concerning the incident in response to the complaint filed by the Rigoberta Menchú Tum Foundation, which had also become a party to the legal proceedings. He stated that human rights had been violated and ascribed indirect responsibility to the national authorities and direct responsibility to those who had taken part in the incident.

29. What happened in Xamán reflects the lack of a policy and culture of national integration. It shows that events of this nature are still psychologically and materially possible and represents a most serious violation of the human rights of the returnees in Guatemala and of refugees and repatriates in Latin America in general. The Expert believes that these events, whose occurrence has not been questioned, should be the subject of a serious, thorough and speedy judicial investigation, with due observance of the substantive and procedural provisions of ordinary law, so that the courts may ascertain responsibilities of all types and impose the appropriate penalties under the law. The judicial decision in the case should also end ambiguities that are injurious to the public good.

2. Right to integrity and security

30. The period under review has seen acts of physical violence accompanied by torture, with the simultaneous development of a culture of intimidation that undermines the security of all the more-or-less organized civil sectors, which have generally shown support for the peace negotiation process.

31. On 23 January 1995, the Human Rights Procurator stated that the violation of the right to life of a minor, Juan Carlos Ruiz Ramírez, and the rights to integrity and security of another minor, Marco Vinicio Rodríguez, had been due to action by police officers Efrain García Cardona and Artemio Yañez Flores while they were on duty on 2 July 1994. In his decision, the Procurator urged the new officials in the Ministry of the Interior, especially the Director-General of the National Police, to exercise better control over the members of the police force, so that their actions would conform to the legal principles in force and lapses of that nature would be avoided in future. One month later, on 22 February 1995, the Human Rights Procurator stated that the National Police had again been responsible for the violation of the human rights of citizens who had been arrested without charge and beaten. On 17 May 1995, he stated that members of the Rapid Reaction Force (FRI) had brutally attacked the children of Mr. Pedro Francisco de Jesus Mayen Morales on 5 January 1995 and that that had constituted a violation of human rights.

32. On 17 July 1995, Mrs. Aracely Alvárez Correa and Mrs. Norma Abrego García, two members of the Committee for the Improvement of the Ramiro de León Carpio Settlement, located in Zone 21 in Guatemala City, were abducted by two armed individuals whose faces were covered. They were held captive for 11 days; after three days of confinement they were tortured with cigarette burns and acid. These events would appear to be the culmination of threats against them by a member of the military intelligence unit and a former member

of the Department of Criminological Investigations (DIC) of the National Police. On 4 August 1995, DIC officers arrested Juan Enrique Figueroa, the owner of a pharmacy in Zone 1 in Guatemala City, took him to a police station and tortured him while interrogating him about stolen vehicles.

33. Also in this context, a complaint was filed by the Archdiocesan Human Rights Office (ODHA) in June 1995, to the effect that the owners of 10 estates in Alta and Baja Verapaz had decided to sterilize the young tenant farmers and their wives. It is alleged that on just one of these estates surgery was performed on 300 men and 100 women.

34. On 3 January 1995, there were reports of threats against Father Julián Bernardo Castro, the Catholic priest for the municipalities of Flores and Genova, Costa Cuca, Quetzaltenango. In his Sunday sermon the priest informed his parishioners of the threats, telling them that some agribusinessmen in the area had said he was a communist and a declared enemy of the capitalist class, simply because he was an enemy of injustice. On 9 January, Genoveva Velásquez, of the Committee for the Defence and Advancement of the Maya People, and Juan León, of Defensoría Maya, filed a complaint concerning threats by the military commissioners and the Civilian Self-Defence Patrols (PACs) against the communities in the Altiplano zone, and also obstruction of community work and the presence of the army.

35. On 6 February 1995, Senaida Cana Chonay, a representative of the Mutual Support Group (GAM), was machine-gunned in the Buena Esperanza settlement on La Merced estate in San Martín Jilotepeque, Chimaltenango. Investigators from the Public Prosecutor's Office maintain that this incident, in which the victim survived, was a crime passionnel. While in hospital, the victim was interrogated by members of the security forces and harassed by the police officers assigned to protect her. On 16 March, Catarina Terraza Chavez, a member of the Guatemalan Widows' National Coordinating Committee (CONAVIGUA), of La Laguna, Nebaj, Quiché, was threatened after returning from a public demonstration held in Guatemala City from 6 to 12 March.

36. On 17 March 1995, the Special Rapporteur of the Commission on Human Rights on extrajudicial, summary or arbitrary executions requested information from the Government about alleged threats against Débora Guzmán and her husband Félix González, trade-union leaders and workers in the Lunafil Inc. textile factory, Julio Coj and José Gil, other union members, and 49 factory workers. Union leaders Félix Hernández, Rigoberto Dueñas Morales, Danilo Aguilar García, Alberto Ramírez Ordóñez, Julian Melchor Guzmán, Edgar Rolando Portillo Colindres and Rafael González Cano, all members of the Guatemalan General Workers' Confederation (CGTG), have also received threats resulting, it is thought, from a complaint they filed regarding the fraudulent purchase of 250 radio patrol cars by the National Police.

37. On 9 April 1995, María de León Santiago, a member of CONAVIGUA, was attacked by Diego Brito, a member of the PAC in Santa María Nebaj, and accused of being a member of the guerrilla forces and receiving members of the Community in Resistance (CPR) in her home. On 26 April, the patrol member's children threatened María and her niece Magdalena. On 10 May, Jacinto Santiago Raymundo, one of María's nephews, was injured by the same patrol member, who said he had orders to kill them. The case was submitted to the Inter-American

Commission on Human Rights with a request for precautionary measures. On 10 April threats were reported against Samuel Hernández Hernández, who had attended the fifty-first session of the Commission on Human Rights.

38. In early June 1995, the President of the Supreme Court of Justice, Mr. Oscar Barrios Castillo, reported threats against 24 judges of various Guatemalan courts and stated that complaints had been filed with the Attorney-General and the National Police. The threats were allegedly anonymous and involved judges who had tried abduction cases.

39. On 12 July 1995, Juana Imul Castro and Magdalena Us Lux, members of the Parraxtut village council, Sacapulas Quiché and Victoria Tiul Imul, a representative of the Women's Defence Committee and member of the Maya Tujal Coordinating Council, also in Parraxtut, were threatened by two former soldiers, Francisco Tum Castro and Juan de León Pérez, who accused them of being guerrillas.

40. Complaints have been filed of death threats and harassment with a hammer suffered by Manuela Tiño, a member of the CONAVIGUA committee in the village of San Rafael Chichop, municipality of Joyabaj, at the hands of the chief of the military commissioners, Napoleón Estrada and the chief of the village's PACs, Vicente Benito Matías. On 21 July 1995, Oswaldo Enríquez, of the Guatemalan Human Rights Commission, received threats. In August, the Civil Society Assembly (ASC) complained of threats against Reverend Vitalino Similox, Mrs. Margarita de Similox and Lucio Martínez, a religious activist, by El Jaguar Justiciero in connection with their efforts to bring about the elucidation of the murder of Pastor Manuel Saquic on 23 June in Chimaltenango and the arrest of those responsible.

41. Following the events in Xamán on 5 October 1995, several wounded members of the "Aurora 8 de octubre" community were taken to San Juan de Dios Hospital in Guatemala City. At the Hospital they complained of harassment by individuals in civilian dress who did not identify themselves and constantly asked them questions about what had happened.

3. Right to personal liberty

42. The unusually frequent occurrence of abductions throughout the country and the lack of forthright judicial action to restore the status quo with respect to the victims and punish the culprits have made this a particularly virulent violation of human rights during 1995.

43. Abductions reached their peak in March 1995, creating veritable paranoia among the more affluent sectors of society. It was cited by Congress to justify the unanimous adoption of a law establishing the death penalty for carrying out or inciting abductions. In the first eight days of April 1995, the National Police reported 20 murders and 11 abductions. In the second week of May, several more abductions took place in the capital. The Minister of the Interior stated that the police hoped, through a recently-established anti-abduction unit, to arrest the members of the gangs responsible. At his meeting with the Expert, he said that five of the eight gangs operating in Guatemala had been dismantled.

44. Archbishop Penados told the press that political leaders were involved in the abductions, through which they hoped to obtain financing for their election campaigns. On 5 June 1995, the Director of ODHA asked the army to intervene in order to check the wave of abductions, indirectly attributing to it control of the entire national intelligence system, the only way to reach the culprits.

45. This situation has led to the designation of what have come to be called "neighbourhood watchmen", groups of residents organized by rank in units and patrols for the purpose of monitoring and reducing crime and acts of violence. The Minister of Defence has stated that the army is supportive of such urban watch groups and is prepared, on request, to assist and train them in the open war on crime. On 12 June, in a public ceremony, the Minister of the Interior authorized the establishment and operation of several "urban vigilante" groups, known as "night watchmen". At his meeting with the Expert, the Minister said that that initiative was confined to Zone 5 in Guatemala City; in his opinion, no further groups would be set up. Other sources expressed the opposite view.

46. On 28 June 1995, two members of MINUGUA (Rui Matsuda, a Brazilian policeman, and Graham Russell, a Canadian observer), Paula Worby, a UNHCR staff member, Daniel Long of the International Support Group for Returnees (GRICAR) and Anne Marie Subervie of Médecins du Monde were taken hostage for 27 hours in San Antonio Tzejá by peasant members of a PAC led by military commissioner Raúl Martínez. The incident was sparked by the desire of a group of returnees to go back to their lands in the Ixcan area; the lands had been abandoned and occupied by other peasants. For two months, Martínez and his people opposed the return, and the returnees waited in Cantabal. When they saw that the authorities were doing nothing to carry out what had been agreed, namely to remove Martínez and his people, the returnees marched on San Antonio Tzejá accompanied by the above-mentioned international officials. When they arrived in the area, there was a confrontation which left one returnee wounded and the five internationals hostages; they were released 27 hours later with the arrival of police officers who had been sent from the capital.

47. MINUGUA denounced these events at a press conference as an example of the prevailing impunity. The police officers did not apprehend Raúl Martínez, for whose arrest two warrants have been issued, and an army Lieutenant-Colonel named Trujillo witnessed the events without intervening and did not inform his superiors until 24 hours later. The Expert asked the authorities the reasons for that situation, which represents a clear obstruction of justice, and was told that in mid-September the Ministers of the Interior and Defence had pledged to enforce the arrest warrants against Raúl Martínez and Military Commissioner Víctor Roman, a suspect in the murder of Pastor Saquic. At the time of writing this report, however, the arrest warrants had not been implemented.

48. The living conditions of prisoners awaiting trial and convicted prisoners have not improved in 1995. About the time of Christmas 1994, two women prisoners in the Pre-Trial Detention Centre in Zone 18 expressed disagreement with their transfer to Antigua Guatemala Detention Centre. The transfer would not only delay their trials but would also make family visits more difficult. Wendy Elizabeth Tzul García and Julia Elvira Dávila López stated

that they had been ill-treated and poorly fed. These complaints were made before the Assistant Human Rights Procurator and two MINUGUA officials.

4. Right to trial and due legal process

49. Little progress has been made in the investigation and conclusion of prominent cases initiated several years ago or of more recent cases. The President of the Judiciary told the Expert that in 1995 "good justice has been delivered" and that the time-limits for the conclusion of cases and handing-down of sentences had been met; he also said that criticism of the work of the Judiciary was part of a vicious circle, since no progress can be made unless investigations are exhaustive. However, the mutual recriminations between the Judiciary and the Public Prosecutor's Office do nothing to resolve an issue which constantly encourages a more widespread feeling of impunity. The proceedings concerning La Exacta estate are a case in point. In the criminal-court proceedings only 10 days before the Expert's mission a National Police Officer was arrested on the grounds of prima facie involvement in the crime. In the labour-court proceedings, however, no progress was made with regard to the events of 1994.

50. With regard to the events at the USAC campus on 11 November 1994, when the student Mario Alioto López Sánchez was killed, the Public Prosecutor's Office ordered the arrest of the former Minister of the Interior, Danilo Parrinello, the former Deputy Minister, Colonel Mario Mérida, and the former Director of the National Police, Salvador Figueroa. The ad hoc committee established to investigate the matter reported that the police officers who had shot the student could be identified from videos. Eleven months after the event the judge in the case ordered the arrest of two persons: Carlos Venancio Escobar Fernández, the deputy chief of National Police Unit V, who was promoted to the rank of Commissioner-General after the arrest, and a man with the family names Sánchez Gómez, third in command of National Police Unit I. This case, which was also brought to the notice of the Inter-American Commission on Human Rights, is still in its preparatory stage. Meanwhile the USAC lawyers are being subjected to persecution and harassment.

51. In the case of the extrajudicial execution of the anthropologist Myrna Mack Chang on 9 February 1994, the Supreme Court confirmed the sentence of 25 years' imprisonment imposed on Noel de Jesús Beteta Alvárez, an army specialist, as the perpetrator of the crime, and ordered that proceedings should be initiated against three other soldiers as the instigators. On 6 December 1994 the Constitutionality Court rejected the applications for amparo made by the three soldiers. Up to September 1995 the case remained at a complete standstill; it was argued that, following the application for precautionary seizure of documents lodged by the plaintiff Helen Mack Chang, the documents were being photocopied. Various depositions were made during September and October.

52. During the investigation of the murder of Jorge Carpio Nicolle and his companions, on 5 December 1994 a request was made for proceedings to be initiated against Juan Acabal Patzam and the PAC members who were the prima facie perpetrators. On the following day, a decision was taken to suspend the proceedings on the grounds of a conflict of jurisdiction with

respect to Acabal Patzam, who was being tried in another case. In March 1995, the proceedings were reactivated; the plaintiff is seeking restitution of the arrest warrant. The Tenth Division of the Court of Appeal is hearing the case. The Attorney-General has requested a public hearing.

53. On 22 March 1995 the United States Congressman Robert G. Torricelli sent a letter to President Bill Clinton saying that Michael Devine and Efraín Bámaca Velázquez (Comandante Everado) "were murdered on the orders of Colonel Julio Roberto (Alpírez), a member of the Guatemalan intelligence service. Colonel Roberto was working for the CIA under contract, and his name was on the list of persons under contract to be paid at the time of the murders". The letter also stated that none of that information had been brought to the attention of Mrs. Jennifer Harbury. On 2 May 1995, Colonel Julio Alpírez, who had been suspended from his post at La Aurora military base in Guatemala City, was cleared by the Court of Appeal in Retalhuleu of any responsibility in the Bámaca case. On 9 May, Attorney-General Ramsés Questas removed prosecutor Machuca, the man in charge of the Bámaca case, from his post on the ground that he had allowed the time-limit for appeal against the decision of the Retalhuleu Appeal Court which had cleared Colonel Alpírez to expire.

54. As a result of a subpoena issued by the Office of the Human Rights Procurator to Gilson Ruben Urizar Cabrera, a resident of El Quiché and member of the Runujel Junam Ethnic Communities Council (CERJ), who was forcibly recruited in 1994 by elements of military zone 302 headquartered in Chimaltenango, it was learned that G-2 intelligence agent Angel Nery Urízar had witnessed Bámaca's seizure and had knowledge of the death of a former member of the guerrilla forces while in army hands. The Office of the Human Rights Procurator, through the army General Staff, summoned Angel Nery Urízar to appear on 9 May 1995; 12 hours before that date he was the victim of an attack on the Pacific Highway in which he was unhurt but his companions were killed. Angel Nery Urízar stated that in 1990 Cristobal Che Pérez, a guerrilla fighter in the Javier Tambriz column of the Revolutionary Organization of the People in Arms (ORPA), was handed over to artillery Captain Mario Ernesto Sosa Orellana at the Patulul detachment in Suchitepequez and inducted into the G-2. On the orders of Sosa Orellana, Che Pérez was reportedly murdered by two of his fellow G-2 agents at the same place where Everardo had been captured, dressed in Everardo's clothing and buried as if he was the guerrilla commander. Comandante Everardo, who had been captured with only minor wounds, has allegedly been tortured and remains in captivity.

55. Meanwhile the Special Prosecutor of the Public Prosecutor's Office, Julio Arango Escobar, went to Washington to take a statement from Santiago Cabrera López, who confirmed that he had seen Everardo alive on several occasions when he himself had been a prisoner at Santa Ana Berlin military base, and implicated Colonel Alpírez and other army personnel in the crime. On 1 June 1995, Special Prosecutor Julio Arango determined that the corpse of the deserter Cristobal Che had been substituted for the body of Efraín Bámaca, Comandante Everardo. He states that the body recovered from Puente Ixcucua, Department of Retalhuleu, could not be identified because the person had been strangled and his skull and face smashed to pieces. The autopsy proved that the body was that of Cristobal Che. The Special Prosecutor, who said that

he had been subjected to death threats, was challenged by the soldiers Julio Roberto Alpírez, Ulises Noé Anzueto Girón and Julio Alberto Soto Bilbao; they accused the Special Prosecutor of being ideologically out of line.

56. The exhumation of Bámaca's body within the confines of La Montañita military detachment in San Marcos was requested by the Special Prosecutor on the application of Jennifer Harbury, who said that she had received information from the State Department about the probable location of Everardo's remains at the detachment. However, exhumation was blocked on three occasions by the military authorities. The work had been entrusted to Guatemala's Forensic Anthropology Group and was to have begun on 14 June 1995 in the presence of the Special Prosecutor, Mrs. Harbury, the forensic anthropologist Fernando Moscoso, the forensic odontologist Manuel Meneses, both appointed by the Public Prosecutor's Office, and MINUGUA personnel.

57. On 27 June 1995, the Human Rights Procurator recommended to the Attorney-General of the Republic that the Special Prosecutor should be given the necessary institutional support, by way of transport, security and a permanent escort, to enable him to do his work effectively. He also recommended that the Ministry of the Interior should make the necessary security arrangements to enable him to operate without restriction "and that there should be no impunity". On 1 August, the Special Prosecutor resigned. Two days later the Appeals Division, sitting as a court martial, upheld a complaint by the Public Prosecutor's Office and rescinded the dismissal of the case against 15 soldiers involved in the affair.

58. One of the unsettled issues is the judicial investigation of the summary execution of the President of the Constitutionality Court, Epaminondas González Dubón. Two persons were arrested for this crime and, according to the Public Prosecutor's Office, there is no connection with or solid evidence of a political crime.

59. Of equal importance in a discussion of the circumstances which encourage impunity is the unwillingness of the police authorities to act on the arrest warrants issued by judges. Reference is made in another part of this report to the cases of the military commissioners Raúl Martínez and Víctor Román. It should also be pointed out that on 29 June 1993 the Second Judge of First Instance in El Quiché ordered the arrest of Santos Chich Us, Santos Tzi and Gaspar López Chiquiaj, members of the Cantón de Chorraxaj, PACs, for the murder of Tomás Lares Cipriano, and that on 20 June 1994 the Ninth Division of the Appeal Court ordered the arrest of Rubén Cruz López, Jacinto Raymundo De Paz, Baltazar Raymundo Santiago, Domingo Brito Bernal, Pedro González Laynez, Aurelio Cruz López and Juan Escobar Pacheco, all PAC members in Chel village in the municipality of Chajul. The difficulties involved in carrying out the orders of the Judiciary are also illustrated by the situation of Juan José Rodil Peralta, Minister of the Interior in the Government of former President Vinicio Cerezo and President of the Supreme Court and the Judiciary in 1992-1993, whose arrest was requested in April 1995 by the President of the Third Court in Guatemala City on a charge of destroying official documents and embezzling public funds during his term of office as head of the Supreme Court. Mr. Rodil is a fugitive from justice, yet he has

been able to complete the registration formalities to run for the Presidency of the Republic and therefore enjoys immunity for the duration of the election period.

60. The document on the work throughput of the secretariat of the Supreme Court of Justice (October 1994-October 1995), passed to the Expert by the President of the Judiciary, reports that 14,098 judicial investigations were assigned to the criminal courts of first instance, the drug-trafficking and environmental courts, and the trial courts; during the same period 72 sentences were handed down in proceedings before the trial courts throughout the Republic. The head of the Public Prosecutor's Office informed the Expert that during 1995, up to the date of her mission, 750 formal charges had been brought and 40 judicial investigations opened. He pointed out a number of obvious obstacles to the performance of his duties (shortage of human and material resources) and, with regard to the recommendation made in the preceding report concerning the establishment of smooth channels of communication with the military and the National Police, he drew the Expert's attention to his signature of a letter of intent with the Minister of the Interior.

61. The delays and lack of progress in most of the judicial investigations encourage a situation of impunity, which the authorities intend to combat by setting up special investigating committees or ad hoc committees and by amending legislation. There is a clear tendency to establish such committees immediately after the occurrence of serious crimes which are prominently reported. This happened, for example, in the cases of police repression on La Exacta estate in Coatepeque on 24 August 1994 and at the University of San Carlos on 11 November 1994, and also after the Xamán massacre, when the President of the Republic convened a high-level committee to lead the investigation, headed by the Attorney-General, the Minister of the Interior and the President of the Presidential Commission for Coordinating Executive Policy in the field of Human Rights (COPREDEH). Strictly speaking, the Attorney-General, who is a member of the investigating committee, is the person responsible for the criminal proceedings in the case. It is therefore difficult to understand why investigations should be transferred from an independent body like the Office of the Attorney-General to allow intervention by agencies of the Executive. Whatever the results may be, these committees, far from enhancing the work of the Judiciary, help to discredit it by creating the impression that it is ineffective.

62. Both the Judiciary and the Legislature have understood that reform of the Code of Criminal Procedure is essential if judicial proceedings are to be streamlined. It should be noted that the provisions in question, which introduce oral proceedings in criminal trials and accord a leading role to the Public Prosecutor's Office, have been in operation for only 15 months and that there has not been a single case conducted from beginning to end in accordance with them, for which reason the reform now proposed covers only the initial stages of the process without addressing it as a whole.

63. In addition, the Legislature formally adopted the recommendations made in the Expert's preceding report and set about incorporating in current criminal law the offences of torture (Decree No. 58-95 of 10 August 1995) and extrajudicial execution and enforced disappearance (Decree No. 48-95

of 15 June 1995). The incorporation of these offences in the Criminal Code is welcome, but the same cannot be said of the description of the criminal acts in question, which departs from the international criteria binding on Guatemala. The "members of groups or gangs organized for purposes of terrorism, insurgency, subversion or any other criminal purpose" are considered to be active subjects of these offences, and furthermore the new provisions constitute a means of extending application of the death penalty (Decree No. 14-95 extended the death penalty to the offence of kidnapping, thus amending article 201 of the Criminal Code), in flagrant breach of the provisions of article 4 of the American Convention on Human Rights.

64. The safety of judges, prosecutors, public and private defence lawyers, and witnesses is a source of concern in Guatemala. The lawyers working for the USAC legal advice service are being threatened. Prosecutor Abraham Méndez, who is in charge of the Carpio case, is constantly harassed, tailed and even physically attacked. As a result of the harassment of witnesses and Carpio's family, on two occasions - 4 June and 26 July 1995 - the President of the Inter-American Court of Human Rights took decisions on provisional measures as provided for in article 63, paragraph 2, of the American Convention on Human Rights requiring the Government to guarantee the security of these persons; these decisions were endorsed by the full Court on 19 September. The Special Prosecutor in the Bámaca case, Julio Arango, resigned because of the threats he had received. Twenty-four judges have been threatened. Witnesses in cases which most people regard as falling within the scope of ordinary law, such as the murder of Karen Fleischman, are intimidated and do not attend judicial proceedings. In this connection, the Attorney-General informed the Expert that his Office provides protection for prosecutors at their request. The President of the Judiciary told the Expert that in 26 cases the safety of judges had been ensured by the Ministry of the Interior and the National Police and that the judges had been transferred.

5. Right of freedom of expression

65. In February 1995, the deputies Francisco Villagrán Kramer and Alfonso Portillo sponsored a bill to amend the law on expression of opinion, introducing penalties for subjective comments tending towards personal attacks, defamation, vilification and slander.

66. On 3 September, the headquarters of the news agency Centro Exterior de Reportes Informativos sobre Guatemala (CERIGUA) in Guatemala City was broken into. All the intruders took away was the computer equipment containing the agency's database; they left cash and other valuables untouched. The complaint of harassment lodged by the Guatemalan correspondent accused the authorities. It should be pointed out that in July 1995 the Attorney-General authorized a judicial search of the CERIGUA premises "on the grounds that it has reported on criminal acts for which the guerrilla forces have claimed responsibility". In these circumstances the national and international press, and even the Human Rights Procurator of Guatemala, expressed their concern and reprobation.

6. Right to privacy (freedom of correspondence and communication)

67. In connection with mutual accusations made by members of Congress during the election campaign, on 14 August 1995 the Minister of Defence acknowledged that "the army listens in to telephone conversations when appropriate" in a statement on the effectiveness of the methods used by military intelligence which were supposed to have been discontinued, together with the "File". Vice-President Arturo Herbruger doubted whether such bugging was really a violation of rights "because the telephone service is a network providing a public service and there may be people listening when one is talking". On 31 July 1995, the Human Rights Procurator issued a statement concerning the existence of a recording of private telephone conversations made by persons unknown. He condemned all practices which erode or limit the secrecy of communications on the ground that they constitute a serious violation of the fundamental rights guaranteed by article 24 of the Constitution and, inter alia, article 11 of the American Convention on Human Rights; he called for the termination of such practices.

7. Right to freedom of association

68. On 27 April 1995, the Human Rights Procurator reported the violation of the human rights of a number of peasant farmers in the village of Hacienda Vieja, municipality of San José Poaquil, Chimaltenango, who had been forced to join the PACs 14 years before and had to carry out patrols and collect firewood and money for the military commissioner and the chief of the PACs. When they refused to do so they were dubbed "guerrillas".

69. Strictly speaking, the existence of the PACs, confirmed unreservedly by the authorities, and their methods of recruitment and operation constitute per se a violation of the right to freedom of association.

8. Political rights

70. There were a number of disputes during the election campaign mentioned above. On 20 May 1995, the National Register of Citizens published a decision disqualifying the presidential candidacy of General Efraín Ríos Montt of the Guatemalan Republican Front (FRG). The FRG lodged an appeal with the Supreme Electoral Tribunal (TSE) to have the decision declared void, but the appeal was rejected. The FRG did not give up and requested the registration of Mrs. Teresa Sosa de Ríos, wife of General Ríos Montt, as a presidential candidate, but the National Register of Citizens refused when it found that the signatures on the application were forgeries.

71. Towards the end of June 1995 the congressional authorities, mostly members of the FRG, instituted antejuicio proceedings against members of the TSE, which charged them with breaking the law by convening elections on the basis of data derived from the 1981 census instead of the 1994 census. The press and deputies of the National Advance Party (PAN) and the Christian Democrats campaigned against the measure on the ground, inter alia, that it must be approved by two thirds of all members of Congress and not by the congressional authorities. The members of the TSE brought an amparo action in the Constitutionality Court, which accepted it. The approved antejuicio action then had to remain unenforced, with the result that antejuicio actions

were brought against Ríos Montt himself, Vice-President Primero Juan Francisco Reyes, the First Secretary of the Administrative Committee of Congress and the leader of the Harris Whitbeck political group, who requested suspension of their status as members of Congress for four months from 21 August 1995, with the second Vice-President, Lizardo Sosa, taking over the presidency of Congress.

72. In these circumstances, and in a serious attempt to combat the traditional reluctance to vote in elections, most of the political parties, together with prominent local figures and even the URNG, launched a campaign to encourage people to vote. The decision to undertake this campaign was prompted by the fact that only 3.5 million of Guatemala's 11 million inhabitants are on the electoral roll, which indicates a widespread failure to register, since at least 50 per cent of the total population is over the age of 18 years. Most of the unregistered persons are members of the rural and indigenous communities. According to TSE figures, 3,204,955 voters were registered for the general elections of 11 November 1990 and 6 January 1991, while for the current election the total increased to 3,711,589. Some interference with the registration of peasants has been noted in rural areas: the local authorities have demanded that they pay 50 quetzales and intimidated them by saying that they were acting in accordance with URNG instructions. Despite these difficulties, the National Register of Citizens recorded an increase of registrations in the departments with the highest percentages of indigenous inhabitants: Sololá, Verapaz, Huehuetenango, Quiché and San Marcos.

73. On 16 May 1995, the URNG General Command published in the press a political statement entitled "The national alternative: starting-point of the transition to democracy". In this statement it appealed for the active participation of citizens in a transparent and honest electoral process in order to prevent "abstentionism from benefiting a minority". In order to combat voter apathy, which in recent elections has been as high as 85 per cent, the URNG General Command outlined the agreements reached in the peace negotiations and urged people to change their habits in order "to succeed for the first time in the past 40 years in harnessing and combining the efforts of all the people who up till now have been marginalized and excluded from participation ... for a national and democratic alternative marking the starting-point of the transition to democracy, demilitarization, social justice, welfare, development and institutional legitimization".

74. In July 1995, Rigoberta Menchú Tum, the winner of the Nobel Peace Prize, launched a campaign to encourage the participation of the indigenous population in the electoral process. The starting-point of this campaign was Rigoberta's own registration. The main purpose of the campaign is to increase the number of registrations, especially among the rural and indigenous population, and then to encourage registered voters to cast their votes. In any event, it is worth noting that the Mayan organizations have claimed 137 candidates as their authentic representatives: one candidate for the vice-presidency, 30 candidates for Congress (including four candidates for the Central American Parliament) and 106 candidates for municipal office.

75. There are 6,348 polling-stations in the chief towns of the 22 departments, so that transport to the polling-station is a

fundamental factor. The President of the TSE told the Expert that such transport is the responsibility of voters and the political parties.

9. Other protected rights

76. On 23 March 1995, Arnoldo Xí, one of the leaders of the Tixilhá de Purulhá community in the Department of Baja Verapaz, was attacked and forced at gunpoint into a vehicle by persons unknown in the vicinity of Puente Matucuy in the district of La Tinta, Panzós, Alta Verapaz. He was with Domingo Ichich, who was unhurt and ran away; his whereabouts remain unknown. On 27 March, judicial proceedings were initiated before the justice of the peace in the municipality of Panzós; the case, involving criminal charges of wounding and kidnapping, was subsequently transferred to the departmental capital Cobán. Evidence was taken during the following two days. On 19 April, the community of Tixilhá held a sit-in in the Plaza Central in Guatemala City to protest against the lack of action in the case. The protest was repeated on 16 May in the park in Cobán. It was not until 22 August that the judge issued an initiating order against Julio de la Cruz Reyes, whose driving-licence was found at the scene of the crime.

B. Economic, social and cultural rights

77. The treatment of economic, social and cultural rights tends to vary in Guatemala. While they are undoubtedly dealt with by the Human Rights Procurator, it is also true that, because they are not covered by the Comprehensive Agreement on Human Rights, their observance is not supervised by MINUGUA. They are also not covered by a number of non-governmental organizations in their area of activity. Otherwise, in addition to being enshrined in domestic legislation, they are covered by the international human rights treaties to which Guatemala is a party.

1. Right to decent and equitable working conditions

78. Payment of the minimum wage laid down by the Government is still a problem in 1995. Workers continue protesting by seizing estates. Unlike what happened in 1994, however, when the occupation of La Exacta estate ended with several dead and wounded, this year all sectors report that evictions have been bloodless. The National Police report that they have managed to initiate dialogues with the occupants and that representatives of the Human Rights Procurator and MINUGUA have been present at the operations.

79. The Ministry of Labour has informed the Expert that a farming survey carried out from 24 April to 29 June 1995 in Alta and Baja Verapaz, which had been singled out in 1994 as being among the areas worst affected by the problem, showed that a little under half the estates surveyed were not paying the minimum wage of 14.50 quetzales. The Ministry said that a mediation process had been initiated, thanks to which the proportion of estates complying with legal minimum wage requirements had risen.

80. The Government also reported that under the terms of Ministerial Decision 85/94, of 29 November 1994, establishing rules for the modernization and organization of the General Labour Inspectorate, a special body of

mediators had been set up to deal with labour disputes, known as the Unidad de Trabajo Social y Mediación (Social Work and Mediation Unit), which had already acted in over 500 cases with positive results.

81. Complaints in this respect are generally combined with other trade union matters.

2. Trade union rights

82. The Ministry of Labour informed the Expert that under the terms of Government Decision 221-95 of 17 May 1995, reforms were introduced in the regulations governing recognition of legal personality, approval of statutes and registration of trade unions, with the aim of speeding up the administrative formalities involved, in accordance with the policy of modernizing State services.

83. According to information supplied by the Guatemalan General Labour Confederation, there are many estates on the south coast of the country where conflicts have arisen with workers over wage claims and allegedly to weaken attempts at trade union organization. In this connection it was reported that 35 and 110 workers respectively were dismissed at the Medellín and Bolivia estates, situated in Chicacao, Suchitepéquez. In San Rafael Panamán and Ofelia, situated in Santa Bárbara, Suchitepéquez, 15 and four workers respectively were dismissed. A further 44 workers lost their jobs at the Santa Anita estate, in the municipality of Pochuta, Chimaltenango. In the cases of the Bolivia, Ofelia and Santa Anita estates, court orders have been issued to reinstate the dismissed staff but without effect.

84. In its 299th report, published in June 1995, the Committee on Freedom of Association of the International Labour Organization (ILO) considered a number of cases concerning Guatemala. The report referred to the direct contact mission of Professor Enrique Marín, and while taking note of the Government's efforts to reduce the number of formalities and the time required to set up trade unions, considered that further progress was needed in that respect. The Committee also referred to acts of discrimination against trade unions and dismissals affecting their members, requesting that the Government should take appropriate measures. The Committee also proposed that the Government and the social partners should set up a national tripartite commission.

85. On 6 June 1995, the Human Rights Procurator, in the light of events which occurred at the beginning of this year, found that the freedom of association and trade union rights of Debora Guzman Chupen, Felix González González and Julio Francisco Coj Vásquez had been violated.

86. At the beginning of September 1995, the Light and Power Union took industrial action against the State-owned Empresa Eléctrica de Guatemala SA (EEGSA, the Guatemalan Electrical Company) calling for the resignation of its chairman and the cancellation of several contracts which the union claimed were prejudicial to the company. In response, the President of the Republic ordered troops to occupy the company premises and initiated proceedings against the leaders on the grounds that they were endangering the company's operation.

87. The Expert has received many complaints of threats against trade union leaders, and also members of their families. In some cases, specific threats were made against close relatives of trade union leaders.

3. Right to health

88. The Human Rights Procurator received 50 complaints relating to the right to health between January and August 1995, compared with 56 complaints received in the first 10 months of 1994. The country's epidemiological profile is characterized by high infant mortality (54 per 1,000 live births) and a high incidence of infectious and nutritional diseases.

89. In Guatemala, some 30 per cent of the health sector's cost is covered by the Ministry of Health, 15 per cent by the Social Security Institute and 8 per cent by the private sector. Compared with a year earlier, the Ministry of Health had increased its budget to 8 per cent of the country's overall budget. Out of the 887 million quetzales (approximately 130 million dollars) available, 49 per cent is allotted to preventive measures and 31 per cent to treatment. The Minister of Health drew the Expert's attention to achievements in the area of prevention and reported that so far in 1995 only 6,900 cases of cholera had been recorded, compared with 16,700 the year before. A sectoral reform programme had been introduced in the departments of Alta Verapaz, Chiquimula and Escuintla, financed by revolving funds totalling 1.8 million quetzales. The budget for medicines has also been decentralized, with the effect of improving distribution.

4. Right to education and culture

90. In the first eight months of 1995, the Human Rights Procurator recorded 52 complaints relating to this right, compared with 43 between January and October 1994. In 1995, the Ministry of Education's budget came to 1,567 million quetzales (approximately 261 million dollars). One per cent of the national budget, about 50 million quetzales, is earmarked for literacy programmes, covering 450,000 students. Nevertheless, the illiteracy rate is still 45 per cent, rising to 70 per cent in rural areas and 77 per cent among some indigenous populations.

91. Guatemala has a school-age population of 2.2 million of which 1.4 million attend school. Out of these, 160,000 are taught in one of the indigenous languages. There are 52,000 schoolteachers in the public system and 30,000 in private schools. There are four teacher-training colleges training bilingual teachers. The Government has introduced a policy of involving parents in the choice of teachers and inspectors, which appears well suited to the needs of the different districts and also of the various ethnic groups. There is no organized informal system of education in Guatemala.

5. The land problem

92. More estates were occupied by peasants in 1995, which gave rise to tension in several areas and led to pressure on the Government by the private sector to take a hard line against the peasants. The Trade Union and People's Action Unit (UASP), which supported the peasant action, said that altogether 104 estates were involved in the conflict. There are two basic reasons for

the occupations: (a) land claims, often by indigenous communities which have been deprived of their land by wily landowners through legal manoeuvres and government favours; and (b) labour conflicts, to back demands for payment of the minimum wage and other workers' benefits.

6. The environment

93. In a decision of 30 May 1995, the Human Rights Procurator noted the occurrence of illegal logging in Sierra de las Minas, municipality of San Agustín Acasaguastlán, El Progreso, deeming it to be a violation of the social right to the natural heritage, the environment and reforestation.

94. The Peasant Unity Committee (CUC) denounced the diversion of the river Coyolate by landowners on 13 June 1995, which led to the total flooding of villages and small landholdings in Santa Ana Mixtán, Canoguitas, La Sábana, Monte León, El Mora and Santa Odilia. None of the authorities they appealed to took any action.

C. Vulnerable groups

1. Indigenous majority

95. Although it may appear paradoxical, the majority in Guatemala is a vulnerable group. Strictly speaking, Guatemalan society itself is highly vulnerable. Out of every 100 indigenous children between the ages of 7 and 12, only 30 attend primary school, compared with 73 per cent of non-indigenous children. Out of every 100 indigenous teenagers between the ages of 13 and 18, only 6 attend secondary school, compared with 32 in the non-indigenous population. Out of every 100 indigenous persons between the ages of 18 and 34, 1.8 attend university, compared with 8 in the non-indigenous sector.

96. It was hoped that the exclusion affecting the Maya peoples would be reversed with the Agreement signed on 31 March 1995, which, in addition to recognizing the identity of the Maya, Garifuna and Xinca peoples within the unity of the Guatemalan nation, commits the Government to taking measures to combat legal and de facto discrimination affecting these peoples, and especially indigenous women. The Agreement recognizes cultural, civil, political, social and economic rights. With regard to the restitution of communal lands and compensation for rights, the Agreement calls for measures such as suspending the award of supplementary titles in respect of property to which the indigenous communities have claimed a right, suspending the statute of limitations in respect of any action involving the plundering of indigenous communities and, in the event that the statute has already expired, establishing compensation procedures. Among other measures, the Government undertakes, in consultation with the indigenous peoples, to establish a joint commission on land rights with the task of studying, devising and proposing the most appropriate institutional arrangements and procedures. The commission is to be composed of representatives of the Government and of indigenous organizations. This Agreement is to enter into force on the signing of a peace agreement.

97. Without prejudice to the decision of the Constitutionality Court to the effect that ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries is fully compatible with the Guatemalan Constitution, members of Congress, chiefly those sitting on the Commission on Human Rights, informed the Expert of their reluctance to approve the Convention on the grounds that "it was no solution". They felt instead that article 70 of the Constitution should be further developed. In any event, the discussion has swayed between various alternatives for years and no decision has been taken.

98. In June 1995, members of the National Indigenous and Peasant Coordinating Committee (CONIC) staged a sit-in in Congress to protest against several decisions, including the decision not to expropriate El Jaibal estate in Sololá, and against the failure to take other decisions, such as approving ILO Convention No. 169.

2. Uprooted persons

99. The Agreement on Resettlement of the Population Groups Uprooted by the Armed Conflict, signed by the Government and the URNG on 17 June 1994, called for the implementation of the commitments undertaken through specific projects due for consideration and execution by a technical committee composed of two government representatives, two members appointed by the uprooted population groups and two representatives of donors, aid workers and international cooperation agencies in an advisory capacity. The representative of the National Fund for Peace (FONAPAZ), Mr. Alvaro Colom, and the Deputy Minister of Agriculture, Mr. Vargas, represent the Government on the committee, and Mr. Marcos Ramírez Vargas and Mr. Alfonso Bauer Paixa represent the uprooted population groups.

100. Other issues mentioned to the Expert by representatives of the organizations belonging to the Consultative Assembly of Uprooted Communities included the communities' right to take part in decision-making and the Government's policy of keeping projects from the Technical Committee. As a serious response to the Xamán massacre, the representatives of the communities withdrew from the Committee.

(a) Communities in resistance (CPRs)

101. The Government and the CPRs (Sierra, Ixcán and Petén) have found neither the place nor the time to renew a dialogue which was broken off towards the end of 1993. Despite this, in 1994 the Ixcán CPR decided to come out into the open, followed by the Petén CPR in 1995. However, the lack of any effective communication with the authorities has left a vacuum with regard to health care, which was provided in the Sierra CPR by the French organization Médecins Sans Frontières, and education. Furthermore, no progress has been made in providing these people with identity papers, so that they constantly have problems identifying themselves when challenged by the security forces. At the Sierra CPR, the municipal authorities and the army have been instigating a confrontation between villagers and CPR members on the grounds that the latter have been stealing the land of the former.

(b) Internally displaced persons

102. The situation depicted in the last report concerning the living conditions of internally displaced persons has not changed in the year under consideration. The members of the Mario Antonio Díaz settlement, located on land belonging to the Banco Nacional de la Vivienda (BANVI), had been threatened with eviction in 1994 and secured a promise, with the assistance of the National Committee for Aid to Refugees, Returnees and Displaced Persons (CEAR), of resettlement and financial compensation. However, they have made no progress with their claims. On 22 May 1995, as no solution was forthcoming, the 160 families moved to the Santa Isabel II housing project in Villa Nueva, which in principle had been assigned to them.

103. Apart from matters relating to inadequate living conditions, representatives of the Guatemalan National Council of Displaced Persons (CONDEG) complained to the Expert about the persecution and harassment of displaced persons by members of the PAC and military commissioners. Thus on 2 April 1995, Ramiro Coy López, José Guadalupe Caal, Leonardo Caal, Gubercindo Caal and Juan Quiej Ixim Icó, military commissioners and PAC members, brought proceedings against Alberto Ico, a displaced person assisted by the CONDEG, accusing him of belonging to the URNG. The same accusation was levelled at Antonio Pop of the municipality of Sayaxché, Petén, by military commissioner Ramiro López Coy on 10 April 1995, and against José Suy Méndez by the former PAC chief Tomás Capir Méndez of the canton of Chunimá, municipality of Chichicastenango, Quiché, on 5 August 1995.

104. On 2 August 1995, some 500 people, including internally displaced persons and low-income inhabitants, were violently evicted by the police in 12th Street, opposite the offices of the Banco Nacional de la Vivienda, in Guatemala City. Although the CONDEG and Ministry of the Interior versions of the reasons for the eviction differ, both agree that it was not without casualties.

(c) Refugees

105. On 25 June 1995, some 25,000 Guatemalan exiles in Mexico, who had not been recognized as refugees by UNHCR and had joined together to form the Association of Dispersed Refugees of Guatemala (ARDIGUA), protested at the lack of support for their return to Guatemala. They said that a year earlier they had applied to President Ramiro de León Carpio for loans to purchase land and had received no reply. The Government reported that a technical evaluation study was being made. On 17 August 1995, ARDIGUA members began a hunger strike to induce the authorities to recognize their plight and take appropriate measures. Finally they obtained the desired loans.

106. Of the 37,325 Guatemalan refugees in Mexico, living in camps in Chiapas, Quintana Roo and Campeche, some 3,161 families totalling about 15,000 persons have organized themselves into standing committees in three groups of returnees, identified as the north-western, northern and southern groups.

(d) Returnees

107. Since the signing of the agreements of 8 October 1992, about 29,000 refugees have returned to Guatemala. Many refugees returned in 1995, including 8,965 persons in the first 10 months. On 31 January 1995, 282 persons settled in the community of Ixcán Grande in the Department of Quiché; on 7 March, two contingents settled, 142 persons in the community of Momolac, municipality of Barillas, in the Department of Huehuetenango, and another 119 persons in Ixcán Chiquito in Quiché. On 24 March, 397 persons joined those who had moved on 17 November 1994 to Fray Bartolomé de la Casas in Alta Verapaz; on 4 April 1995, 870 persons settled in El Quetzal, municipality of La Libertad, in Petén; on 7 April 1995, 360 persons moved to La Providencia in Escuintla; 1,327 persons, joined by a further 55, settled in several communities in Ixcán on 21 April and 5 May 1995; 674 persons settled in Esmeralda, municipality of Dolores, in Petén, while a further 582 arrived on 8 August 1995 in the area of Chancolín, municipality of Barillas, in Huehuetenango, and 185 in several communities in Ixcán, Quiché, on 10 August 1995.

108. In June 1995, the CEAR published a report entitled: "Two years of aid for the uprooted population". According to this report, between 7 June 1993 and 7 June 1995, 12,882 persons returned to Guatemala. Also according to the report, 1995 was the year of the great return, given that 5,376 persons had returned in five months and a further 6,048 were expected. It said that loans had been provided for the purchase of land to settle the returning population with government funds. With a view to launching a number of farming projects, the Work and Production Reintegration Fund (FORELAP) has invested over 32 million quetzales, enough to buy eight farms in the departments of Alta Verapaz, Huehuetenango and Petén. A further 200 individual loans were provided, assisting over 5,000 persons altogether. Meanwhile, the National Institute for Agrarian Transformation (INTA), through the National Land Fund (FONATIERRA), bought an estate in the Department of Escuintla for 8.5 million quetzales, assisting 360 returnees.

109. The Director of the CEAR told the Expert that in 1995 FORELAP had issued loans for the purchase of 17,952.5 hectares of land, worth the equivalent of 4.5 million dollars, for the benefit of 911 families. Nevertheless, land questions continue to cause concern. At the time of the Expert's mission, the main problem concerned returnees who held claims to land in Kaibil Balam and Santa María Dolores, but were willing to give up their claims, since the land was occupied, in exchange for farms in Petén. As to routine practical matters, the CEAR still faces problems with food distribution, due to the fact that only four vehicles are available for transport. The State's health and education services have still been unable to reach the returnee population. The CEAR has mentioned a project for human rights education to be conducted jointly with MINUGUA and has recognized that the health problems of the communities are being dealt with by Doctors of the World and Médecins Sans Frontières.

110. Apart from all these questions, which undoubtedly have to be dealt with effectively by the Government in the light of its commitments under the Agreements of 8 October 1992, one factor which has become a priority in practical terms has been the security of returnees. The incidents involving

military commissioner Raúl Martínez in Kaibil Balam on 28 June 1995, which included the illegal detaining of national and international officials, give some idea of the fragility of the return climate. However, the Xamán massacre of 5 October 1995 constitutes the most significant violation of the rights of refugees/returnees in Latin America. In effect, the Letter of Understanding signed by the Government of Guatemala and UNHCR on 13 November 1991, and the Agreements of 8 October 1992 signed by the CEAR and the Standing Committees of Representatives of Guatemalan Refugees in Mexico, with the guarantee of the international community in general and UNHCR in particular, have been violated since these instruments stipulate that the return should take place in conditions of dignity and safety, and should constitute a lasting solution to the refugee problem. The right of returnees not to be discriminated against has also been violated, in the exercise of their fundamental human rights, on account of having been refugees. The civil and peaceful nature of the return and the security guarantees have also been ignored.

3. Children

111. Although in the Convention on the Rights of the Child, which Guatemala has ratified, persons up to the age of 18 are considered to be children, this is not borne out in practice. In fact, there is a complete absence of policies concerning the population aged from five to 18. Children are suddenly considered to be adults for purposes of work and family upkeep and are treated as such by the law enforcement authorities. In addition, the statistics indicate that three out of every 10 children are physically ill-treated by their relatives or guardians.

112. According to a study entitled "Guatemala, situation analysis" prepared by UNICEF in March 1995, about 950,000 children and young people work instead of receiving appropriate education for their age, while about 240,000 children engage in marginal gainful activities such as theft, prostitution and begging.

113. At the Office of the Procurator-General of the Nation, the Expert was told of an institution known as "Family, Women and Children", where officials work to protect children. It was added that, in the absence of any organizational legislation, such activities lacked any legal framework. The Human Rights Procurator, on the other hand, has set up an office for the defence of children's rights, to ensure respect for the rights of the child, to take measures mainly in connection with ill-treatment and to coordinate the activities of the Commission to Promote the Convention on the Rights of the Child (PRODEN) and the Street Children Support Project.

114. In 1991, the PRODEN Commission had begun preparing a draft Code for children and young persons, in response to the commitments undertaken by Guatemala under the Convention on the Rights of the Child. This proposal, which UNICEF has been keen to see approved, is divided into three parts, of which the first considers the basic principles of legislation, determining rights and obligations and defining offences, the second establishes appropriate procedures for guaranteeing and ensuring implementation of the rules set out in the first part, and the third regulates administrative and judicial procedures for the protection of children and young persons whose human rights have been threatened or violated, with a view to facilitating their social reintegration. The proposal, which was submitted to Congress

early in 1995, is opposed by some sectors who argue that children cannot be full legal subjects because of their immaturity. It is to be hoped that a distinction will be drawn between de facto and de jure capacity, so that it will be recognized that children's incapacity in terms of civil law is only de facto incapacity, which does not prevent them from being entitled to or exercising fundamental rights, as provided for in international treaties, which are given precedence in the Guatemalan Constitution itself.

4. Women

115. Guatemalan society is paradoxical in its approach to women. In accordance with ancestral traditions, they are excluded from decision-making, and even from educational opportunities (the illiteracy rate among women is much higher than among men). It is a society which very much reflects the male viewpoint, especially as regards power. However, it also offers examples of women who have been active even in the midst of grief. One eloquent illustration in this respect is the Guatemalan Widows' National Coordinating Committee (CONAVIGUA). In a world of men, the Nobel Peace Prize winner Rigoberta Menchú Tum, the indigenous leaders Rosalina Tuyuc, Rosario Pú and Nineth Montenegro of the Mutual Support Group, and Helen Mack herself have defied social structures without giving up their families.

116. There is a clear absence of any effective, even superficial policy as regards equality of opportunity. The Human Rights Procurator has been organizing his Office for the Defence of Women since 1991, with a view to seeking gender equality. This work has been concentrated in five areas, namely, research, education and dissemination, the legal and social area, psychology, questions related to violence and those related to economic and social development. As pointed out earlier, the Family, Women and Children Office of the Procurator-General of the Nation deals with cases of domestic violence.

117. Among human rights violations, Guatemala does not distinguish women's rights in particular. Nevertheless, as in other societies, violation is the common lot of women. This implies endless suffering for any woman, which is aggravated by the fact that popular beliefs make it difficult to do anything about it, or even to be honest about the event.

III. RECOMMENDATIONS

118. The situation described in the preceding chapter does not provide any grounds for reporting improved performance or even a better atmosphere in the past year with regard to the opportunities for enjoyment and exercise of the human rights protected by the customary and treaty law binding on Guatemala. This means, in itself and in view of the deterrent and preventive role of MINUGUA, that the situation has worsened. It is therefore necessary to specify the areas of greatest shortfall requiring initiatives and programmes designed to remove or substantially reduce the structural obstacles to the realization of human rights.

A. The institutions of a State governed by the rule of law

119. The beginning of the transition to democracy in 1985 brought into civilian hands the administration of a number of governmental institutions which had formerly been run by the military then in power. Without prejudice to the progress made over the past 10 years, the military retains a decisive influence in the conduct of public affairs. Real power and formal power do not always coincide. The power exercised by the military structure shows that it is the only organization with a presence throughout the country and that it is an extremely efficient one. The proliferation of armed elements having some connection with the army, the Civilian Self-Defence Patrols (PACs) and the military commissioners, is only part of a picture in which the right to bear arms is enshrined in the Constitution and is exercised more extensively with every passing day. This right is supposed to provide protection against the very widespread social violence, which is indeed a reality and is exacerbated by violence manufactured artificially by various illegal groups which enjoy a favourable climate for their activities. This is facilitated by the increasingly widespread and comprehensive impunity, which the Government describes as "structural" or "not fraudulent" and which it tries to combat by creating more and more ad hoc bodies and amending existing provisions. As a result, there is no official term to describe what is not in conformity with the law.

1. Distribution of powers

120. No one will be surprised to learn that in Guatemala the military exercises its power throughout the country through the army, the civilian institutions which it has managed to develop (banks, television, radio, schools, etc.), the centralization of State intelligence, and the deployment of armed units with a greater (military commissioners) or lesser (PACs) degree of dependence on the army. In these circumstances, the military must be scaled down to match the country's actual size, taking into account the extent of the essential commitment which it must make to the operation of a democratic system, i.e. total subordination to the civil power.

121. In his speech on Army Day, the President of the Republic announced the elimination of the "military commissioners", while at the same time acknowledging "the effort made by all those citizens acting as military commissioners in the defence of the State at the most difficult moments of the internal confrontation". He nevertheless stressed that "with the development of institutions and the strengthening of the legal system, and on the assumption that the peace will continue, the military commissioners are no longer necessary because all parts of the country are witnessing the emergence of a governmental presence and local power which must be consolidated". The President's decision to disband the military commissioners was an important one. In her preceding report the Expert called for the elimination of this institution. Given this affirmation of political will, the need now is to take whatever action is possible to give effect to that will. It is thus vital to fill the resulting institutional vacuum as quickly as possible with civil authorities which must be consolidated, especially at the municipal and departmental levels. The President must ensure that effect is given to his decision throughout the country, for this will help to tear down a barrier of impunity generated by the activities of the commissioners over time, an

impunity which is further confirmed by the events involving Raúl Martínez and the charge that the murder of Pastor Saquic was committed by Víctor Román.

122. Everything stated in earlier reports concerning the PACs and the need to disband them remains true. This year the Expert was even regaled with the most conservative arguments for retention of these groups. These arguments were also set out in a speech made by a PAC member at one of the events marking Army Day, in which he praised the counter-insurgency role of the PACs and rejected the accusations of violations of human rights. Nevertheless, in 1995 members of the PACs have been accused of crimes which, if unpunished, will constitute gross violations of human rights. In addition, the PACs have disrupted implementation of the agreements of 8 October 1992 on the return of refugees and arbitrarily deprived Guatemalan and international officials of their freedom. Until the PACs are disbanded the army must keep them under control; otherwise it will be difficult to prevent them from taking the law into their own hands. In 1994 the Human Rights Procurator requested Congress to disband the PACs; in April 1995 the Chairman of the Congressional Human Rights Commission, Deputy Francisco Villagran Kramer, decided to submit to the full Congress the necessary legislation for the final disbanding of the PACs, to take effect three months after the signing of the peace agreement. However, no decision has been taken in the matter.

123. The Government of Guatemala needs a State intelligence service. Up to now this service has been provided by military intelligence, which has not modified its structure and habits dating back to the era of de facto military governments. The proposal for an Intelligence Secretariat submitted to Parliament in October 1994 remains before that body, albeit with amendments; for example, the clause on secrecy of activities has been removed, and it is also regarded as necessary to retain dual civil-military control, which gives the lie to the supposed demilitarization. The specialized government units do not seem to be convinced of the real need finally to limit military intelligence to purely military matters and to create an authentic civil intelligence service; indeed, in the Presidential Palace itself intelligence experts argued that civil society was not yet ready for such a move.

124. The differing views of the Government and the Expert concerning the nature of the Presidential General Staff (EMP) have rendered talks on this subject fruitless. It must again be pointed out that the transformation of the EMP into a civilian support service for the President would do much to limit the power of the military in a society in which its influence is decisive.

125. The Guatemalan army must change its training programmes. The suggestion is not merely that instruction should be given in the content of the international human rights instruments but that the indoctrination of soldiers should be moderated so that they are able to distinguish civilians from insurgents and change their attitude to the use of arms. This is the tragic lesson to be drawn from what happened at Xamán.

126. Here it must be emphasized yet again that the registration of weapons should be the responsibility of the civil authorities and that strict regulations should be introduced on the calibres of firearms and the conditions for authorization to carry them.

2. Administration of justice

127. There is no need to explain the importance of the Judiciary as a means of resolving disputes in a society, as superintendent of the application of the standards of conduct embodied in the legal order and as guarantor of human rights.

128. Insufficient use is made of this mechanism in Guatemala. The backlog of cases in a court system that does not cover the whole country, the shortage of human resources, and the intimidation of members of the Judiciary when they apply the law with determination have generated an image of inefficiency which the authorities seek to offset by establishing ad hoc investigating committees whenever a case achieves prominence. The Public Prosecutor's Office does not administer the exercise of the public right of action in such a way as to produce definite results in time and form. As a result judges and prosecutors blame each other for the deficiencies of which the justice system is accused. In addition, the social climate of widespread violence and the incredible numbers of weapons in the hands of the populace instil fear in all those who have a responsibility for seeing that justice is done. All of this, added to the widespread and decisive influence of other axes of power, promotes a situation of virtual impunity which is acknowledged on all sides but which nobody has decided to tackle at its roots.

129. In these circumstances it is essential for the State to guarantee the security, independence and impartiality of all members of the Judiciary and, to that end, for the Government to eliminate, in accordance with the law, any improper interference in this area. The jurisdiction of the military must be cut back and rendered inapplicable to violations of human rights. Other obstacles to the proper administration of justice must also be removed, and the security of everyone participating in the process (parties, witnesses, experts) must be guaranteed. The improvement of professional standards in this area through the establishment of a general judicial council, the upgrading of the School of Judicial Studies, and the establishment of a career structure for numbers of the Judiciary - recommendations already made (although not adopted by the Government), combined with the restriction of other powers and axes of power which impede the application of the law, ought to lead to a substantial improvement in the justice system. In the same area the establishment of a general judicial council would relieve the Supreme Court of Justice of responsibility for supervising the courts and enable it to operate exclusively as the supreme jurisdictional organ. In addition, the whole system for the administration of justice, which needs a greater number of female personnel, must be brought into line with the actual situation of a country in which most of the inhabitants are indigenous.

130. These considerations of security, independence and impartiality should also be applied to the Public Prosecutor's Office, which bears fundamental responsibility for directing criminal investigations and prosecutions. In this case the removal of the obstacles referred to above should help to make criminal prosecution policy more effective by freeing the procedure from improper and outside influences. Without prejudice to the work already done, it appears necessary to reorganize the channels of communication and the arrangements for cooperation with the security forces so as to enhance the effectiveness of the prosecutors.

3. Law-enforcement officials

131. The demilitarization of the police and security forces, the improvement of their professional standards and the removal of undesirable elements are permanent goals in the Guatemalan situation. There have been very many complaints of corruption in the National Police. On 7 February 1995, the ad hoc committee on the National Police reported the sale of posts in the police force in the latter part of the term of office of former Minister Parrinello. This included posts in the Rapid Reaction Force (FRI) awarded on payment of 1,500 quetzales to illiterates, persons with police records and persons against whom arrest warrants had been issued. Lieutenant Colonel Fernández Ligorría was accused of the crimes of automobile theft and drug trafficking but was cleared by a military court for lack of evidence.

132. Attention must again be drawn to the need to build a new unitary police system which would do away with the three existing bodies (National Police, Financial Police and Mobile Military Police), a system answerable to the civil authorities which has high professional standards and carries out its functions free of any improper influence.

133. All aspects of the prison system relating to prisoners and their guards must also be regulated at an early date by act of Congress, so as to clarify the rights and duties of both categories and enable prison sentences to fulfil their allotted function of social rehabilitation, in accordance with the Standard Minimum Rules for the Treatment of Prisoners.

4. Office of the Human Rights Procurator

134. The existence of a body such as the Office of the Human Rights Procurator in a situation such as that in Guatemala can be interpreted in at least two ways. It is the focal point for receipt of complaints and its archives constitute the history, with full names, of Guatemala's pain; it also constitutes the hope for a change in the general situation and, hence, in the patterns of violation of human rights.

135. It is absolutely essential that this body should be supported. There must be no stinting of human and material resources for its use, especially as it is a body which, unlike other bodies created on an ad hoc basis, has a permanent place in the country's life and is even provided for in the Constitution. Accordingly, the Expert reiterates her recommendation of last year that the Office's presence in rural areas should be strengthened by increasing the number of its branch offices or appointing more staff members to make visits to the villages, that its capacity to deal with the problems of a largely indigenous population should be enhanced, and that it should acquire the capacity to take legal action in following up its recommendations.

5. Local authorities

136. The local authorities must be strengthened in accordance with the recommendations made in this and earlier reports concerning changes in the exercise of power and the termination of excessive influence. What is needed is correct operation of the machinery for electing local authorities so that they genuinely represent their people, the provision of resources to resolve

everyday difficulties, and emphasis on the need to act in accordance with the law. In addition, as pointed out above, the gap which will be left by the military commissioners and, in due course, the PACs will have to be filled by the local civil authorities.

B. National integration

137. Guatemalan society suffers from profound fragmentation which impedes the enjoyment and exercise of human rights by large sectors of the population. While the indigenous majority is subject to de facto discrimination and, strictly speaking, is not regarded as the "majority", things are not much better for the groups which were forced off the national stage by the repressive policies of the preceding decade. In this connection, the Xamán massacre offers painful testimony of the cruel lack of a national policy of integration. As the Government itself acknowledges, this tragedy was caused by the distrust which persists among the people affected by the internal armed confrontation. Nor does Guatemala have a policy for integration of women and even less of children, who are not even recognized as full subjects of rights. Failing the introduction of a comprehensive policy of national integration at the cultural, legal and political levels, it would appear difficult for the majority of the population to exercise their human rights.

1. The indigenous majority

138. The letter of the law ignores the existence of the indigenous population, and social attitudes relegate it to the margins. Ways must therefore be found of securing the adoption of rules which encourage integration, including measures of positive discrimination. It has become customary to call for approval of ILO Convention No. 169. The same applies to the enactment of legislation to give effect to article 70 of the Constitution. In these circumstances, the authenticity of the indigenous representatives in the various institutions of State will depend on the effectiveness of the policies adopted. Appropriate means must be found to ensure that formal education in Guatemala is more equally available to all, and especially education in the native tongues of the various peoples. A system of informal education must be introduced to fill the gaps in the State-run system and to make available to the people, under State control, the necessary tools for improving their qualifications and learning various skills. The situation of the indigenous population must be taken into account not only in the administration of justice, but also by the other authorities responsible for promoting the participation of the authentic representatives of the indigenous peoples in the taking of decisions. The culture of the indigenous peoples must be developed for everybody's benefit. In this context, a suitable regulatory framework is provided by the universal instruments which are being elaborated, such as the Draft Declaration on the Rights of Indigenous Peoples.

2. Displaced persons

139. The picture which society in general and the army in particular have of the CPRs and the returnees, refugees and displaced persons is a strange one. The stigma of belonging to the guerrilla forces is what must be eradicated. In this connection, action by the Government seems confined within narrowly defined limits; there is no dialogue with the CPRs which decided to

participate in the Consultative Assembly of Displaced Persons. Furthermore, the integration of the CPRs in the life of the nation is a result of their own efforts and of encouragement given by humanitarian and relief organizations. Scattered displaced persons and refugees have obtained government support following the use of coercive measures. In the case of the returnees, the Government seems to think that its duties end once the returnees are on Guatemalan territory. The serious incident involving Raúl Martínez in Kaibil Balam in June 1995 foreshadowed what happened in Xamán. The Government owes society an explanation for these crimes, and such an explanation can consist only of a court ruling which dispels the uncertainties and clearly establishes the legal responsibilities. The Government must introduce confidence-building measures which will make all these groups feel part of the nation. The military and all those who abandoned the national stage must be sent identical messages about peaceful coexistence and must accommodate it. The Government must provide all these Guatemalans with basic services, most of which are at present furnished by international aid agencies, and it must ensure their safety.

3. Women and children

140. With respect to the integration of women and children, the Expert recommends the early adoption of the Code for Children and Young Persons and resolution of the theoretical issues relating to the de facto legal incapacity of minors, and the gradual implementation, in the form of concrete commitments, of the Convention on the Elimination of All Forms of Discrimination Against Women. In these areas as well, the creation of an appropriate climate is decisive, and such a climate must provide for the elimination of violence in the family. In this connection, the regional system has adopted the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women ("Belém do Pará Convention") of 9 June 1994.

C. The socio-economic situation

141. Guatemala occupies 108th place in the human development index, not because of its per capita GDP (US$ 943 in 1993) but because life expectancy at birth and standards of education are very low. The infant mortality rate was 40 per 1,000 in 1993. In 1995, the housing shortage was estimated at 1.2 million units, but the deficit is much greater in qualitative terms since most dwellings lack basic utilities such as water, drainage and electricity. In Guatemala City 1 million of the 3 million inhabitants live in destitute areas.

142. Despite the apparent balance in the traditional macroeconomic variables, there is the worrying factor of the deficit in Guatemala's public finances; the low tax burden (the ratio of tax revenue to GDP is 6.5 per cent, the lowest in Latin America) does not allow the State to make full use of its tools of income redistribution or to increase public expenditure and the social security funds. As a result, Guatemala's traditional social inequalities have become more acute, and at present 2 per cent of landowners hold 65 per cent of the usable land, and 10 per cent of the population account for 44 per cent of the national income. The natural consequence of this situation is increased poverty.

143. The 1993 Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights, rightly affirmed the universality, indivisibility and interdependence of all human rights, including economic, social and cultural rights. Without prejudice to the progressive commitments made in this area, it should be pointed out that they entail the identification of priorities in the use of resources. In order to do this, the Government must provide basic services to the whole population as opposed to the present coverage of 30 per cent. It must also start a fruitful dialogue with the economic sector in order to encourage it to pay the legal wage and fulfil the associated commitments (Bono 14, holidays, etc.), to register for the purposes of social security, and to find acceptable means of communication with the workers which promote and do not obstruct the formation of trade-union organizations, in accordance with the rights guaranteed by several of the international instruments in force in Guatemala. In addition, the Government must make the monitoring machinery more efficient in this area: the number of labour-court judges is far from sufficient, and this shortage obstructs their work; the performance of the labour inspectorate must also be improved.

D. The peace negotiations

144. The peace negotiations begun in January 1994 have produced important agreements, but this has taken time. This process is the necessary precondition for any national action to improve the enjoyment and exercise of the human rights which Guatemala has undertaken to guarantee. In this connection, the change of government on 14 January 1996 must not cause discontinuation of the process or any substantial change in its tempo; nor should there be any change in the binding nature of the agreements already signed with respect to the obligations which they impose on the Republic of Guatemala.

145. Until the armed conflict is finally ended, both parties must comply with the relevant rules of international humanitarian law. The business sector has made its demands known with regard to the collection of the war tax by the URNG, as well as its views on a number of other matters such as intimidation, kidnapping, burning of crops, etc., acts which, strictly speaking, constitute not violations of international humanitarian law but common crimes. Nevertheless, it must be pointed out that any action which disregards or lowers the minimum level of rights accorded to the civilian population under common article 3 of the four Geneva Conventions of 1949 on international humanitarian law and Protocol II Additional to the Geneva Conventions relating to the Protection of Victims of Non-International Armed Conflicts does constitute a violation of international humanitarian law. This includes the confinement of civilians in the districts taken and held by the URNG, for example in the departments of Chimaltenango, Sacatepequez, Santa Rosa and Quiché, on the occasion of Army Day so that they could be harangued about participation in the elections.

IV. CONCLUSIONS

146. Analysis of the situation of human rights in Guatemala in 1995 shows that some important decisions have been taken, generally in conformity with the recommendations made: the policy decision of the President of the Republic to disband the military commissioners; the speed with which he took institutional

responsibility for the tragic events at Xamán; the appointment of civilians to head the Ministry of the Interior and the National Police; small advances in the sensitive areas of education and health; and the enactment by the Legislature of a number of laws which had been recommended, even though their scope has been very narrowly defined. The joint achievements include the increased voter turnout in the elections and, in particular, the fact that the country's indigenous majority managed to nominate more than 100 candidates who, even when they were not selected in accordance with the age-old procedures, do genuinely represent their communities.

147. Some of these sensible decisions have had an effect but they have not succeeded in solving or changing in any palpable way the substantive problems affecting the exercise of human rights in Guatemala which we have tried to deal with in this report. The Government of Guatemala told the Expert that the solution of these problems will take time. If that is so, and on the understanding that the Government will take a clear political decision to tackle the obstacles, the Commission on Human Rights should continue to monitor closely the situation of human rights in Guatemala.

148. During 1995 both MINUGUA and the Commission on Human Rights, through the Expert, have been working in Guatemala. The course of events has demonstrated that their functions are different but complementary. The two mechanisms, one with a mandate from the international community based on the Charter of the United Nations and the other with a mandate from the parties to the Comprehensive Agreement on Human Rights, have a common objective: to improve conditions for the enjoyment and exercise of the human rights protected by the international instruments binding on Guatemala. Accordingly, the approach of universality, interdependence and indivisibility, in the context provided by the Universal Declaration of Human Rights, relevant customary international law, and the regional and universal treaties in force in Guatemala, is reflected in the reports which the Expert submits to the Commission. MINUGUA, whose work is having an undeniable deterrent effect, is carrying out the functions assigned to it in the Comprehensive Agreement both by the Government and by the URNG with respect to a set of rights whose protection both sides regard as a matter of priority.

149. The complementary activities of the Commission and MINUGUA must be continued, especially in the light of the foregoing evaluation.

150. In the present circumstances, and mindful of the conclusions drawn from the examination of the human rights situation in Guatemala in this report, the Expert believes that the sole focus should be a programme of cooperation with the Office of the Human Rights Procurator designed to strengthen its machinery for investigation and processing of cases and to help it to extend its coverage to the whole country.

Annex

PROGRAMME OF WORK OF THE EXPERT DURING HER THIRD VISIT TO GUATEMALA
(including activities in Mexico City and Geneva)

Date	Places visited and persons interviewed
6/10/95	Guatemala City
	Mr. Ramiro de León Carpio, President of the Republic;
	Monsignor Próspero Penados del Barrio, Archbishop of Guatemala;
	Mr. Ronalth Ochaeta, Human Rights Office of the Archdiocese of Guatemala.
7/10/95	Visit to the community of Aldea Aurora 8 de octubre in Xamán, Chisec (Alta Verapaz)
	Accompanied by Mr. Carlos Boggio, representative of UNHCR, Mr. Arnaldo Ortiz, representative of the Centre for Human Rights, and MINUGUA officials;
	Working meeting with MINUGUA, Mr. Leonardo Franco, Mr. Gerald Plantagenest, Mrs. Leila Lima and Mr. Jaime Esponda;
	Mrs. Rigoberta Menchú Tum and Mr. Gustavo Meoño of the Rigoberta Menchú Tum Foundation.
8/10/95	Josefinos, municipality of La Libertad, and Flores, Petén
	Visit to the two towns accompanied by Mr. Carlos Boggio, representative of UNHCR, Mr. Arnaldo Ortiz, representative of the Centre for Human Rights, and MINUGUA officials.
	Guatemala City
	Mr. Ronalth Ochaeta, Human Rights Office of the Archdiocese of Guatemala;
	Mr. Eduardo Galindo Ralón;
	Dr. Jean Schmitz, Médecins Sans Frontières (MSF) - Switzerland, and Dr. Marlon García, MSF - France;
	Mr. Fernando Bernal, Médicos del Mundo;
	Mr. Héctor Muñoz, Mr. José Franciso Morales, Mr. Victor Melgar, Mr. Carlos Bonifasi Girón, Mrs. Cristy López-Ibañez, Mr. Marco Augusto García, Mr. Max Quirín and Mr. Roberto Castañeda from the agricultural and business sector.

9/10/95 Mr. Vicente Arranz Sanz, Chairman of the Presidential Commission for Coordinating Executive Policy in the field of Human Rights (COPREDEH);

Mr. Alejandro Maldonado Aguirre, Minister for Foreign Affairs;

Mr. Carlos Enrique Reynoso Gil, Minister of the Interior;

Group of professionals from the Office of the Human Rights Procurator;

Mr. Lorenzo Pérez, Guatemalan National Council of Displaced Persons (CONDEG);

Mrs. Marta Arrivillaga de Carpio and Mrs. Karén Fischer de Carpio;

Ambassadors of the Group of Countries Friends of Guatemala;

Mrs. Ileana Alamilla, CERIGUA News Agency;

Mr. José Pinzón of the Guatemalan General Labour Confederation (CGTG) and Mr. José Cirín accompanied by four representatives of the Sindicato en Formacion of the National Police;

Trade Union and People's Action Unit (UASP), Guatemalan Workers' Union (UNISITRAGUA), National Civil Servants' Federation (FENASEP), National Electrification Institute Workers' Union (STINDE), and Peasant Unity Committee (CUC);

Mr. Manolo Vela, Secretary-General of the Association of University Students (AEU), Mr. Oscar Victor Hugo Villatoro and Mr. Noe Erazo Bautista of the USAC legal advice service.

10/10/95 Brigadier-General Otto Pérez Molina, Chief of the Presidential General Staff;

Mr. Angel Conte Cojulum, Director-General of the National Police;

Mr. James Fox, Ambassador of Canada;

Mr. Lars Franklin, UNDP Resident Coordinator; Mr. Thierry Delrue (UNICEF); Dr. Jacobo Finkelman (Pan-American Health Organization/WHO); Mr. Marius de Gaay Fortman (WFP); Mr. Dennis Mairena (UNHCR); Mr. Sergio de León (UNFPA); and Mr. Arnaldo Ortiz (UNHCR);

Mr. Abraham Méndez García, Public Prosecutor;

Mrs. Patricia Monahan and Mr. Michael Bowle, International Peace Brigades;

Mrs. Aura Elena Farfán and Mrs. Esther de Herrarte; Mrs. Georgina Navarro, and Mrs. Blanca de Hernández of the Guatemalan Association of Relatives of Detained/Disappeared Persons (FAMDEGUA);

Mrs. Rosario Pu and Mr. Sebastian Morales, Peasant Unity Committee (CUC);

Mr. Fáctor Méndez, Centre for Human Rights Research, Study and Promotion (CIEPRODH);

Mrs. Emilia García and Mr. Miguel Morales of the Mutual Support Group (GAM);

Mrs. Rosalina Tuyuc, Coordinator, and other representatives of the Guatemalan Widows' National Coordinating Committee (CONAVIGUA);

Mr. Augusto Willemsen-Diaz, Deputy Human Rights Procurator.

11/10/95 Ambassadors of the European Union;

Mr. Mario Roberto Guerra Roldán, President of the Supreme Electoral Tribunal;

Mr. Ramiro Ordoñez Jonama, acting Procurator-General;

Mr. Mauricio Rodríguez Wever, Executive Director of the National Committee for Aid to Refugees, Returnees and Displaced Persons (CEAR);

Mrs. Anabella Morfín, Minister of Labour;

Mr. Juan León, Defensoria Maya;

Mrs. Oswaldo Jom Quej, Chairman, Coordinator of Mayan Organizations;

Consejo de Pueblos Mayas;

Coordination Office of Mayan Associations of Guatemala;

Centro de Estudio de Cultura Maya;

Academia de Lenguas Mayas;

Mrs. Lesbia de Valan, Association of Guatemalan Lawyers;

Mr. Rubén Mayorga, Guatemalan Association for the Prevention and Control of AIDS, and Mrs. Helen Corman;

Mr. Jafeth Cabrera, Rector of the University of San Carlos (USAC);

Monsignor Jorge Mario Avila, President of the Episcopal Conference;

Monsignor Gerardo Flores and members of the Mediation and Verification Agencies and the International Returnees Support Group (GRICAR);

Mr. Carlos Boggio, UNHCR.

12/10/95 Mr. Staffan Wrigstad, Ambassador of Sweden;

Mr. Lizardo Sosa, acting President of the Congress of the Republic;

Mr. Roberto Stein, Chairman of the Human Rights Commission, and Mr. Pablo Duarte, Chairman of the Peace Commission of the Congress of the Republic;

Mr. Alfredo Tay Coyoy, Minister of Education;

Mr. Gustavo Hernández Polanco, Minister of Health;

Mr. Mario Aguirre Godoy, new President of the Supreme Court of Justice, and Mr. Oscar Barrios Castillo;

Mr. Patrick Sahnd, International Committee of the Red Cross;

Mr. Frank La Rue, Centre for Legal Action on Human Rights;

Mrs. Helen Mack, Myrna Mack Foundation;

Mrs. Clara Arenas, Executive Director of the Institute for the Advancement of the Social Sciences (AVANCSO);

Mr. Ramiro de León Carpio, President of the Republic, and Mr. Vicente Arranz.

13/10/95 Ambassadors of the Group of Countries Friends of Guatemala;

Major-General Marco Antonio González Taracena, Minister of National Defence, and General Mario Enríquez;

Mr. Edmundo Vásquez Martínez, acting President of the Constitutionality Court;

Mr. Ramsés Cuestas Gómez, Attorney-General of the Republic;

Mr. Leonardo Franco and Mrs. Leila Lima, MINUGUA;

Mr. Vitalino Similox, Evangelical Churches;

Mr. Edwin Marroquín Navas, Vice-Chairman of the Guatemalan Association of Journalists;

Mr. Hugo Arce, journalist, Press Conflicts and Workers Office;

Consultative Assembly of Displaced Persons;

Mr. Roberto Lara;

Mrs. Ana María Cofiño and companions, group of columnists from Siglo Veintiuno, Luna Llena collective;

Mr. Amílcar Méndez, Runujel Junam Ethnic Communities Council (CERJ);

Mr. Thierry Delrue, Mr. Marilis de Estrada, Mrs. Gloria Castillo and Mrs. Ana Raquel Tovar, of the Commission to Promote the Convention on the Rights of the Child (PRODEN);

Mr. Hugo Morán;

Mrs. Carmen Rosa de León, Assembly of Civil Sectors;

Mrs. Victoria Cáceres de Sandoval and Mrs. Eunice Lima, former Minister of Culture;

Mr. Jorge Mario García Laguardia, Human Rights Procurator.

14/10/95 Press conference in VIP lounge at La Aurora airport;

Departure from the country.

Mexico City

16/10/95 Mr. Michel Gabaudan, UNHCR;

Mr. Toribio Pineda, Guatemalan Human Rights Commission;

Comandantes Gaspar Ilom, Carlos González, Pablo Monsanto and Rolando Morán of the Unidad Revolucionaria Nacional Guatemalteca (URNG).

17/10/95 Mrs. Julia Artiga, Standing Committees on Guatemalan Refugees in Mexico;

Departure from the country.

Geneva

19 to 26 October Working meetings with the United Nations High Commissioner for Human Rights, the Assistant Secretary-General for Human Rights, the Director for Latin America and the Caribbean of UNHCR, and members of the Centre for Human Rights;

Drafting and finalizing the report.

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